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May 2, 2011

VIA ECF

The Honorable David N. Hurd
United States District Judge
United States District Court,
Northern District of New York
10 Broad Street
Utica, NY 13501

Re: Utica Mutual Insurance Ins. Co. v. Fireman's Fund Ins. Co.
No. 6:09-CV-0853 (DNH)(GHL)

Dear Judge Hurd:

We write to oppose the May 2, 2011 letter request by Utica Mutual Insurance Company ("Utica") for leave to submit a reply brief in connection with Utica's appeal to this Court of two non-dispositive rulings entered by Magistrate Judge George H. Lowe.

In our experience, a reply brief may be appropriate where an adversary raised in its opposition papers an argument that the movant had not addressed in its initial submission and that the movant could not have earlier anticipated. Here, Utica does not assert that Fireman's Fund Insurance Company ("FFIC") raised any "new" argument that Utica could not have anticipated earlier. As such, there is no genuine need for a reply. Any doubt is dispelled by the opening paragraph of Utica's letter, in which Utica states that it "requests permission to file . . . reply papers so it can address Fireman's Fund's numerous misrepresentations."

Further, Utica's letter request should be disregarded by this Court when the Court considers Utica's pending appeal. In its letter request, Utica did precisely what a party seeking leave to submit a reply is not supposed to do. Utica argued the underlying merits, effectively putting its reply before the Court before receiving permission to submit a reply.

Respectfully,



John F. Finnegan

cc: Walter Andrews, Esq.	(via ECF)
Syed S. Ahmad, Esq.	(via ECF)
Mary A. Lopatto, Esq.	(via ECF)
Nancy E. Monarch, Esq.	(via ECF)

